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7 and for Defendants AEROFLEX INCORPORATED
8 AMI SEMICONDUCTOR, INC., MATROX
ELECTRONIC SYSTEMS, LTD., MATROX
GRAPHICS, INC., MATROX INTERNATIONAL
CORP., MATROX TECH, INC., and
AEROFLEX COLORADO SPRINGS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RICOH COMPANY, LTD.,

Plaintiff,

VS.

AEROFLEX INCORPORATED, AMI SEMICONDUCTOR, INC., MATROX ELECTRONIC SYSTEMS LTD., MATROX GRAPHICS INC., MATROX INTERNATIONAL CORP., MATROX TECH, INC., AND AEROFLEX COLORADO SPRINGS, INC.

Defendants.

SYNOPSYS, INC.,

Plaintiff,

VS.

RICOH COMPANY, LTD.,

Defendant.

Case No. C03-4669 MJJ (EMC)

Case No. C03-2289 MJJ (EMC)

OPPOSITION TO RICOH'S MOTION FOR
LEAVE TO FILE SURREPLY RE MOTION
FOR RULE 11 SANCTIONS AGAINST
RICOH FOR ASSERTING FRIVOLOUS
CLAIMS

Date: October 17, 2006
Time: 9:30 a.m.
Courtroom: 11, 19th Floor
Judge: Hon. Martin J. Jenkins

1 Ricoh's motion for leave to file a surreply should be denied.

2 First, Ricoh's request for leave is based upon the erroneous premise that Defendants raised new
 3 arguments in their reply brief. Yet, it is apparent that the two "new" arguments Ricoh alleges
 4 Defendants make are not new and were fair responses to arguments advanced in Ricoh's Opposition.
 5 *See Rule 11 Opp. at 6 ("Defendants have known of Ricoh's position . . . at least since Ricoh submitted*
 6 *its Final Infringement Contentions in March 2006."); id. at 22-23 (Section B entitled "Ricoh's*
 7 *Reliance Upon the Opinion of its Experts is Objectively Reasonable"). Ricoh's motion for leave to file*
 8 *a surreply should be denied, as Defendants' reply brief did precisely what a reply brief should –*
 9 *respond to the arguments made in Ricoh's Opposition. Moreover, Ricoh's motion should be denied*
 10 *because Ricoh could have made each of the arguments it raises now in its Opposition.*

11 Second, Defendants' alleged knowledge of Ricoh's position does not justify leave for the
 12 following reasons:

- 13 a) Claim construction, including, in particular, the issue of what subject matter was
 14 disclaimed by the patentee, is a question of law on which this Court has already ruled;
 15 no statement by any lawyer could change this basic premise of patent jurisprudence
 (which Ricoh does not challenge). Reply at pp. 2:8-4:2.
- 16 b) Erik Oliver's letter does not admit that "register transfer level descriptions as defined by
 17 Darringer was a factual issue." Mtn. for Leave at 1:14-15. Defendants encourage the
 18 Court to review the evidentiary record for itself; it simply does not support Ricoh's
 assertions. Moreover, it was improper for Ricoh to submit and rely on "FRE
 408"communications exchanged exclusively between the parties for any purpose.
- 19 c) Rather than supporting Ricoh, the evidence submitted with Ricoh's surreply
 20 conclusively demonstrates that no "real insight" into Ricoh's position was provided
 21 until May of 2006. Every new document identified by Ricoh simply states that the RTL
 22 issue will be resolved at trial or is a question of fact. This does not constitute "real
 23 insight." In contrast, Ricoh's expert report (and Settlement Conference Statement)
 24 provide "real insight" as well as the evidentiary basis for Rule 11 sanctions: Ricoh's
 25 objectively unreasonable decision to ignore or contradict the Court's Claim
 26 Construction Order.
- 27 d) Even if Defendants understood earlier that Ricoh's ultimate plan was to have an expert
 28 opine on a purely legal issue in direct contradiction of the Court's Claim Construction
 Order, which they did not, that does not excuse Ricoh's violation of Rule 11.

1 Third, Defendants' motion is not premised on any hunch or conjecture about Ricoh's experts.¹
 2 Defendants' Rule 11 motion is based on the fact that Ricoh and its counsel behaved objectively
 3 unreasonably by not dismissing this case, or seeking review, reconsideration or clarification, as soon as
 4 they discovered that they could not advance an infringement argument consistent with the Court's clear
 5 Claim Construction Order, which dictates a finding of noninfringement in this case.

6 Finally, Ricoh and its counsel cannot hide behind experts to avoid Rule 11 sanctions. Ricoh
 7 and its counsel hired the expert, directed his efforts, and instructed its expert to opine on something
 8 Ricoh and counsel knew to be a purely legal issue. Moreover, it is irrelevant that Dr. Soderman has
 9 decided to agree with Dr. Papaefthymiou on the purely legal issue of what is taught in Darringer.²
 10 What is relevant – and determinative,³ however, is that Dr. Soderman agrees with Defendants that
 11 Defendants' inputs fall within the scope of the disclaimed "RTL as taught in Darringer" as the claim
 12 has been construed by the Court.⁴ Reply at pp. 6:6-7:5.⁵

13 It is not only reasonable, but expected, that when the Court issues its Claim Construction Order
 14 it will be reviewed carefully by the parties and followed. It is not sanctionable for a party to seek
 15 clarification or reconsideration of the Court's ruling or even to stipulate to noninfringement based on
 16 the ruling and seek appeal. However, it is objectively unreasonable and sanctionable to hire an expert
 17 and have that expert offer an opinion that contradicts the Court's Claim Construction Order and to
 18
 19

20 1 The Court should note the irony inherent in the contrast between Ricoh's arguments. Ricoh argues Defendants have been
 21 "caught in a lie" because they should have had "real insight" into Ricoh's theory as of Mr. Takaguchi's letter of May 2,
 22 2005. If Defendants should have had "real insight" (which they did not), then clearly Ricoh and its counsel had such
 23 insight – and they had it and decided to proceed long before Dr. Papaefthymiou was hired.

24 2 In its expert reports Ricoh clearly relied only on Dr. Papaefthymiou with regard to this claim element. In any event, the
 25 analysis would not change regardless of how many paid experts were willing to opine in contradiction to the Court's Claim
 26 Construction Order.

27 3 The case would need to be dismissed regardless of Dr. Soderman's testimony on this issue. Ricoh's sole expert report on
 28 this issue, from Dr. Papaefthymiou, does not include any evidence supporting infringement under the Court's definition.

29 4 Defendants have not advanced any new definition of Darringer or made any new noninfringement arguments as the Court
 30 is undoubtedly aware, but simply describe the same definition in different words for readability.

31 5 Ricoh suggests in its footnote 5 that the inadvertently omitted "CITE" in Defendants' reply represents unsupported facts.
 32 This is wrong. The inadvertent missing cite from footnote 8 of the Reply is Brothers Decl. [Docket 622], Ex. 32 (Soderman
 33 Tr. at 55:20-21; 78:20-80:13).

1 continue to advocate infringement based on the expert's opinion. For these reasons, Ricoh's request
2 for leave to file a surreply should be denied, and Rule 11 sanctions should be granted.

3 Dated: October 12, 2006

Respectfully submitted,

4 HOWREY LLP

5
6 By: /s/Denise M. De Mory

Denise M. De Mory

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8 and Defendants AEROFLEX
9 INCORPORATED, AMI
10 SEMICONDUCTOR, INC., MATROX
11 ELECTRONIC SYSTEMS, LTD.,
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